

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MITCHELL L. SCHMELTZER, L.P.N.,	:	LS07100412NUR
RESPONDENT.	:	

[Division of Enforcement Case # 06 NUR 037 & 06 NUR 055]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Mitchell L. Schmeltzer, L.P.N.
1801 E. Main Street
Merrill, WI 54452

Wisconsin Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Mitchell L. Schmeltzer, L.P.N., Respondent, date of birth September 10, 1974, is licensed by the Wisconsin Board of Nursing as a licensed practical nurse (L.P.N.) in the state of Wisconsin pursuant to license number 34324, which was first granted August 27, 1997.

2. Respondent's last address reported to the Department of Regulation and Licensing is 1801 E. Main Street, Merrill, WI 54452.

3. From March 20, 2000 until his employment was terminated on March 25, 2005, Respondent was employed as an L.P.N. at Aspirus Wausau Hospital in Wausau, Wisconsin. In December 2003 and January 2004, Respondent:

- a. Diverted Diazepam and Vicodin from his employer for his personal use. Vicodin contains hydrocodone, a class III controlled substance. Diazepam is a benzodiazepine and a class IV controlled substance.
- b. At times, falsely charted administration of medications to a patient when he himself consumed the drugs.
- c. At times, administered a reduced amount of pain medication to a patient and used the remainder himself.

4. On January 28, 2004, Respondent was hospitalized at St. Joseph's Hospital in Marshfield, Wisconsin, for detoxification from opioids and benzodiazepines and was diagnosed with poly-drug dependency. On February 4, 2004, Respondent was discharged to outpatient residential chemical dependency evaluation and treatment at St. Joseph's Hospital and completed the program on February 17, 2004. After discharge from the residential program, Respondent continued weekly outpatient counseling with an AODA counselor and attended daily NA meetings. Respondent returned to his employment as an L.P.N. on the Cardiac Telemetry Unit at Wausau Hospital.

5. Respondent self-reported himself to the Department of Regulation and Licensing (Department) and on July 3, 2004 was admitted into the Department's Impaired Professionals Procedure (IPP), a non-disciplinary monitoring program that may be offered to credential holders with alcohol and/or drug issues, which allows participants to obtain treatment and ongoing aftercare while returning to safe practice. Respondent agreed to abide by various conditions set out in the participation contract, including not working where he would have access to controlled substances.

6. Respondent began providing random urines for IPP drug screens. In August and September 2004, the tests were positive for tramadol and morphine. From October 4 through October 8, 2004, Respondent was again hospitalized at St. Joseph's Hospital for narcotic withdrawal and opioid dependence. He returned to work on October 24, 2004 but on March 25, 2005, was terminated from his employment.

7. Beginning May 3, 2005, Respondent was employed as a float pool L.P.N. at Pine Crest Nursing Home in Merrill, Wisconsin. On February 2, 2006, Respondent obtained medication room keys from another employee and took a card of eleven Tramadol from a medication cart and placed it in his bag with the intent of taking the medication. The medication was noted to be missing and Respondent was discharged that day. On February 16, 2006, Respondent was dismissed from IPP based on substantial violations of his "Agreement for Participation."

8. Because Respondent has left the nursing profession and has no intention of returning to nursing, Respondent has offered to surrender his license as a licensed practical nurse.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by diverting controlled substances from his place of employment, has obtained drugs other than in the course of legitimate practice and as otherwise prohibited by law, which is misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(2), and which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by engaging in the conduct set out above, has abused drugs to an extent that it has impaired his ability to safely and reliably practice, as defined by Wis. Adm. Code § N 7.03(2), and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The SURRENDER by Mitchell L. Schmeltzer, L.P.N., of his license as a practical nurse in the state of Wisconsin is hereby ACCEPTED, effective immediately.

2. If Respondent ever applies to the Board for licensure or relicensure:

a. Respondent shall meet all requirements which are then required by statute and administrative rule for that license.

b. Respondent shall have paid the costs of this proceeding in the amount of \$560.00 to the Department of Regulation and Licensing, pursuant to Wis. Stat. § 441.22(2).

c. It shall be in the sole discretion of the Board whether to grant Respondent any license, with or without limitations.

3. All requests, notices and payments required by this Order shall be mailed, faxed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935

Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264

4. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

10/4/07
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

:
:
:
:
:

MITCHELL L. SCHMELTZER, L.P.N.,
RESPONDENT.

STIPULATION

LS _____ NUR

[Division of Enforcement Case # 06 NUR 037 & 06 NUR 055]

It is hereby stipulated and agreed, by and between Mitchell L. Schmeltzer, L.P.N., Respondent; and John R. Zwieg attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (files 06 NUR 037 & 06 NUR 055). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to the Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or his attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Mitchell L. Schmeltzer, L.P.N.

Respondent

1801 E. Main Street

Merrill, WI 54452

Date

John R. Zweg

Attorney for Complainant

Division of Enforcement

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 53708-8935

Date
